

## **REMARKS**

In an Office Action mailed May 15, 2006, claims 1, 2 and 7 were rejected under 35 U.S.C. §102(e) as being anticipated by Patton et al. (U.S. Patent No. 6,408,301; hereinafter “Patton”); claims 3-8, 10-20, 25, 29 and 32 were rejected under 35 U.S.C. §103(a) as being unpatentable over Patton in view of Wang; and claims 21-24 and 28 were rejected under 35 U.S.C. §103(a) as being unpatentable over Patton in view of Wang and further in view of Katseff. Applicant respectfully traverses and requests reconsideration.

Claims 1, 2 and 7 stand rejected under 35 U.S.C. §102(e) as being anticipated by Patton. Briefly, Patton teaches a camera system 10 that allows “metadata” (i.e., index information) to be “automatically captured and stored and/or input by a user.” (col. 2, lines 19-20) Patton teaches that the “[a]utomatically recorded metadata may include things such as, for example, index pointers to images, time, date, GPS location (associated place), attitude, altitude, direction, exposure settings (aperture/shutter speed), illuminate (daylight/tungsten/florescent/IR/flash), lens setting (distance/zoom position/macro), sound volume/frequency, scene data (blue sky/water/grass/faces), and subject motion.” (col. 4, lines 28-34) Virtually all of the specific examples of “automatically recorded metadata” taught by Patton comprise data that is generated by the camera itself and that is not received from an external source, i.e., pointers to images, time, date, attitude, altitude, direction, exposure settings, illuminate, lens setting, sound volume/frequency, scene data, subject motion.

The only possible exception to camera-generated automatic metadata taught by Patton is the “GPS location” metadata, although Patton is silent with regard to exactly how the GPS location metadata is determined. Although not defined by Patton, it is assumed that “GPS” refers to the so-called “Global Positioning System”, which, as known in the art, is a satellite-based system used for the accurate determination of location information virtually anywhere in

the world. (See, for example, U.S. Patent No. 4,445,118 issued to Taylor et al.; hereinafter “Taylor”) As is generally known in the art, “GPS location” data (such as latitude/longitude coordinates) is determined through a comparison of multiple received satellite-generated timing signals by a suitably configured receiver. (Taylor, column 1, line 32 – column 2, line 2) The signals sent by the satellites do not, by themselves, provide location data; only further processing by a receiver can provide location data. (Taylor, column 2, lines 45-57) In this manner, the location of a given receiver may accurately determined. (Taylor, column 1, lines 48-51) Note that the satellites giving rise to the timing signals orbit the earth and are not associated with any particular location. (Taylor, column 1, lines 42-47)

In contrast, the present invention, as embodied by claim 1, recites receiving, by a media capture device, index information “from an external source related to the subject.” That is, the index information is received from a source *external to the media capture device*, which external source is *related to the subject* being captured by the media capture device. As noted above, Patton is unclear regarding how his “GPS location” data is determined. As a practical matter, Patton’s GPS location data must either be: (i) determined by the camera itself (i.e., the camera is equipped with a suitable GPS receiver), or (ii) receive the GPS location data from a source (again, a GPS receiver) external to the camera. The former possibility, if true, fails to meet the claimed limitation of receiving index information from a source external to the media capture device since it would be the camera itself that is determining the GPS location data. The latter *possibility* is likewise irrelevant to the present invention because Patton fails to either explicitly or implicitly (i.e., inherently) teach the use of an external source of index information. M.P.E.P. §706.02 Thus, to the extent that Patton fails to expressly teach receiving GPS location data from a source external to the camera, such teaching must be shown to be inherent to the disclosure of

Patton in order to anticipate claim 1. However, that a given limitation *might* be taught by a reference is not sufficient to demonstrate anticipation.

As noted in M.P.E.P. §2112, that a certain characteristic *may* be present in the prior art is not sufficient to establish the inherency of that characteristic. (emphasis in original) Indeed, that same section goes on to state that there must be “a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic *necessarily* flows from the teachings of the applied prior art.” (emphasis in original) With regard to the instant rejection of claim 1, Applicants respectfully submit that no such basis in fact and/or technical reasoning has been supplied and that, in fact, a teaching of receiving index information from a source external to the media capture device does not necessarily flow from the teachings of Patton. Indeed, any assertion as to the source of Patton’s GPS location data would be speculative as Patton is completely silent on the topic. Therefore, Patton fails to anticipate claim 1.

Furthermore, as noted above, claim 1 also requires the external source of index information to be related to the subject being captured by the media capture device. Again, the GPS location data taught by Patton is the only possible index information that might be received from an external data source. However, Patton does not state what the GPS location data is indicative of, i.e., the location of the camera itself, the location of the subject being captured or the location of something else. Applicant respectfully submits that Patton is, at best, ambiguous or, at worst, completely silent with regard to this claim limitation. Thus, Applicants again submit that Patton fails to anticipate claim 1 to the extent that it fails to explicitly or inherently teach an external source that is related to the subject being captured by the media capture device.

For the reasons above, Applicant respectfully submits that claim 1 is in suitable condition for allowance. Furthermore, claims 2 and 7, being dependent upon and thereby incorporating the limitations of claim 1, are likewise not anticipated by and therefore allowable over Patton.

Claims 3-8, 10-20, 25, 29 and 32 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Patton in view of Wang. Applicants note that claims 8, 13, 19, 25, 27 and 29 have been amended above to specifically recite, as in claim 1, that the source of the index information is external to or separate from the media capture device. For this reason, Applicants respectfully submit that Patton fails to teach this aspect of claims 8, 13, 19, 25, 27 and 29. Furthermore, the application of Wang does not remedy this deficiency of Patton. Indeed, Wang teaches:

. . . a method for recognizing a media sample, such as an audio sample, given a database index of a large number of known media files. The database index contains fingerprints representing features at particular locations of the indexed media files. The unknown media sample is identified with a media file in the database (the winning media file) whose relative locations of fingerprints most closely match the relative locations of fingerprints of the sample. (Wang, paragraph [0018])

It is Applicant's understanding that the "fingerprints" and "landmarks" (Wang, paragraph [0039]) are being compared to the presently claimed "index information" to the extent that Wang teaches the use these fingerprints and landmarks when searching for matching audio samples (Wang, paragraphs [0040], [0081]). However, Wang clearly teaches that the fingerprints and landmarks are derived directly from the audio samples being analyzed (Wang, paragraph [0039]). Stated another way, Wang's "index information", unlike the presently claimed invention, is not received from an external source, but is instead derived from the media file captured by the media capture device. As such, it can be seen that the combination of Patton in view of Wang fails to establish *prima facie* obviousness of claims 8, 13, 19, 25, 27 and 29 to the

extent that the combination of references fails to teach each and every claim limitation of claims 8, 13, 19, 25, 27 and 29. (See M.P.E.P. § 2142: “To establish a prima facie case of obviousness . . . the prior art reference (or references when combined) must teach or suggest all the claim limitations.”)

Applicant notes that claims 3-7, in addition to reciting patentable subject matter, incorporate the limitation of claim 1. As shown above, neither Patton alone or the combination of Patton and Wang teach all of the limitations of claim 1 (i.e., receiving index information from an external source). Applicant further notes that claims 10-12, 14-18, 20 and 32 are dependent upon independent claim 8 (claims 10-12), independent claim 13 (claims 14-18), independent claim 19 (claim 20) and independent claim 27 (claim 32). Because claims 10-12, 14-18, 20 and 32 incorporate the limitations of the independent claims from which they depend, Applicant submits that the combination of Patton in view of Wang fails to establish a prima facie case for obviousness of claims 10-12, 14-18, 20 and 32. Therefore, Applicant respectfully submits that claims 3-7, 10-12, 14-18, 20 and 32 are in suitable condition for allowance.

Claims 21-24 and 28 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Patton in view of Wang and further in view of Katseff. Applicant notes that claims 21-24 and 28 are dependent upon independent claim 19 (claims 21-24) and independent claim 27 (claim 28). Patton, as described above, fails to teach each and every limitation of independent claims 19 and 27, which failure is not remedied by the additional teachings of Wang and Katseff. Katseff teaches a “a networked multimedia information system which may be utilized to record, store and distribute multimedia presentations together with any supplemental materials that may be referenced during the presentation.” (Katseff, abstract) To the extent that Katseff teaches anything about receiving “index information” (presumed by Applicant to be the “supplemental

materials" referred to by Katseff), it appears that the index information is not received by the media capture device, as presently claimed (Katseff, Fig. 3; column, 7, lines 26-44) but is instead provided to a downstream device (Katseff, server 40). Because claims 21-24 and 28 incorporate the limitations of the independent claims from which they depend, Applicant submits that the combination of Patton in view of Wang and further in view of Katseff fails to establish a prima facie case for obviousness of claims 21-24 and 28. Therefore, Applicant respectfully submits that claims 21-24 and 28 are in suitable condition for allowance.

Applicant respectfully submits that the claims are in condition for allowance and respectfully requests that a timely Notice of Allowance be issued in this case. The Examiner is invited to contact the below listed attorney if the Examiner believes that a telephone conference will advance the prosecution of this application.

Respectfully submitted,

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